Calendar No. 293

101ST CONGRESS *1st Session* | SENATE | REPORT 101-163

AMENDING TITLE 31 OF THE UNITED STATES CODE TO INCREASE SETTLEMENT AUTHORITY AND EXPAND COVERAGE RELATING TO CLAIMS FOR DAMAGES RESULTING FROM LAW ENFORCEMENT ACTIVITIES

OCTOBER 12 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. BIDEN, from the Committee on Judiciary, submitted the following

REPORT

[To accompany S. 604]

The Committee on the Judiciary, to which was referred the bill (S. 604), having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

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I. PURPOSE

The bill raises from $500 to $50,000 the ceiling on the amount that Federal agencies are permitted to pay in settlement of claims by third parties who are innocently injured in the course of law enforcement activities. The bill would apply to all of the law enforcement agencies within the Department of Justice including the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Marshals Service.

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II. Legislative History

S. 604 was introduced by Senators Biden, Moynihan, Simon and DeConcini on March 16, 1989. A similar bill, H.R. 972, was introduced in the House of Representatives by Congressman Edwards.

At a meeting of the Judiciary Committee on July 27, 1989, Senator Biden offered a technical amendment to S. 604 which was accepted unanimously by voice vote. The amendment, suggested by the Department of Justice, replaced the list of Justice Department agencies covered by the bill with a cross-reference to title 18, section 2680(h) of the U.S. Code, which defines the term "investigative or law enforcement officer." The adoption of this amendment made S. 604 identical with respect to this issue to H.R. 972 as passed by the House of Representatives.

III. Discussion

Under current law, there are two ways for an innocent third party to recover for injuries caused by a Federal law enforcement agency. If the injury was the result of the negligence of Government agents, or of some other tortious act, the injured party may file suit under the Tort Claims Act. If, however, the injury was not the result of any tortious conduct, but rather resulted from the proper and lawful exercise of the agency's law enforcement responsibilities, the injured party can only recover under 31 U.S.C. 3724. This statute, which currently applies only to the FBI, allows the Government to pay up to $500 to any innocent third party who is injured in the course of the Bureau's law enforcement activities.

There are many ways in which nontortious injuries can occur to innocent third parties in the course of the law enforcement activities. For example, agents in pursuit of a fleeing suspect may collide with an innocent person's car, fire a bullet through his window, or be required to break down his door. In such cases, the injured party may not recover under the Tort Claims Act unless the Government agents are held to have been negligent. Damages arising from nonnegligent acts may be compensated under section 3724, but only if the injury was caused by the FBI, and only up to the amount of $500.

The bill would amend section 3724 in two ways. First, it would raise the $500 limit to $50,000. This amount is considered necessary to cover damages to automobiles, vessels, and residences. Second, because there is no reason that the statute should apply only to the FBI, the bill would expand it to include other law enforcement agencies of the Department of Justice, including the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Marshals Service.

The effective date provision would make the amendment applicable to any claim arising in the future, any claim pending at the time of enactment, and any claim arising before the date of enactment for which the time for making a claim under current law had not yet expired.

IV. Vote of the Committee

On July 27, 1989, with a quorum present, by voice vote, the Committee on the Judiciary unanimously ordered the bills, S. 604 (as amended) and H.R. 972, favorably reported.

V. Text of S. 604 as Amended

[101st Cong., 1st Sess.]

A BILL To amend title 31 of the United States Code to increase settlement authority and expand coverage relating to claims for damages resulting from law endorcement activities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO SETTLE CLAIMS.

(a) Section 3724 of title 31, United States Code, is amended—

(1) in the section heading, by inserting "or other law enforcement component of the Department of Justice" after "Investigation";

(2) in subsection (a), by striking "$500" and inserting "$50,000";

(3) in subsection (a), by striking out "Director" and all that follows through "Investigation" and inserting investigative or law enforcement officer as defined in section 2680(h) of title 28 who is employed by the Department of Justice"; and

(4) in subsection (b), by amendment the first sentence to read as follows: "The Attorney General shall make an annual report to the Congress on any settlements made under this section.".

(b) The item for section 3724 in the table of sections for chapter 37 of title 31, United States Code, is amended by inserting "or other law enforcement component of the Department of Justice" after "Investigation".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall apply to—

(1) any claim arising on or after the date of the enactment of this Act;

(2) any claim pending on the date of enactment of this Act; and

(3) any claim arising before the date of enactment of this Act for which the time for presenting the claim to the Attorney General under the last sentence of section 3724(a) of title 31, United States Code, has not expired.

VI. Section-by-Section Analysis

Section 1 amends 31 U.S.C. 3724 in the following ways: It raises the maximum amount that can be paid by the Government in any one case under this section from $500 to $50,000, and it makes the section applicable to all investigative or law enforcement officers (as that term is defined in 28 U.S.C. 2680(h)) employed by the Department of Justice. It also amends the reporting requirement under subsection (b) to require the Attorney General to report an-

nually on settlements made under this section instead of on a case-by-case basis.

Section 2 constins an effective date provision that would make the amendment applicable to any claim arising in the future, any claim pending at the time of enactment, and any claim arising before the date of enactment for which the time for making a claim under current law hand not yet expired.

VII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 31, 1989.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 604, a bill to amend title 31 of the United States Code to increase settlement authority and expand coverage relating to claims for damages resulting law enforcement activities, as ordered reported by the Senate Committee on the Judiciary, July 27, 1989.

Based on information provided by the U.S. Department of Justice (DOJ), CBO estimates that the increased costs to the government resulting from this bill would be less than $50,000 a year—probably significantly less in most years. This estimate is based on the Federal Bureau of Investigation's (FBI) recent experience with the claims affected by this bill.

S. 604 would increase from $500 to $50,000 per case the amount payable by the DOJ for damages resulting from law enforcement activities. The bill would also expand the coverage of the statute to other law enforcement bureaus in the DOJ—the Drug Enforcement Administration, the Immigration and Naturalization Service, the U.S. Marshals Service, and the Bureau of Prisons; the current statute applies only to the FBI. This authority is intended to reimburse innocent third parties who suffer damages as the result of the law enforcement activities of the DOJ.

The FBI currently processes 25 to 30 claims each year and pays roughly $10,000 each year as settlements of these claims. According to the FBI, most of these claims would not be affected by the increased limit. Nevertheless, an average of four claims are not settled each year because the claimants refuse to accept the $500 maximum payment; these claimants have no recourse in the courts and receive no payments. It is difficult to predict how much these settlements would be with a higher limit, but we expect them to be no more than $5,000 to $7,500 per case on average. Therefore, increased settlement costs are unlikely to exceed $20,000 to $30,000 per year for the FBI. The settlements are paid from appropriated funds.

The other law enforcement bureaus in the DOJ are not currently covered by this statute, and have not maintained records on third party claims. Taken together, these bureaus probably conduct about the same number of investigations as the FBI, and would probably have similar experiences with third party claims. Therefore, we estimate that the total costs of the bill would be roughly

double the costs to the FBI—probably no more than $50,000 annually. Costs in most years are likely to be less.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the Act will not have direct regulatory impact.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made my S. 604 as reported are as follows: Existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

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TITLE 31—MONEY AND FINANCE

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CHAPTER 37—CLAIMS

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§ 3724. Claims for damages caused by the Federal Bureau of Investigations *or other law enforcement component of the Department of Justice*

(a) The Attorney General may settle, for not more than **[**$500**]** *$50,000* in any one case, a claim for personal injury, death, or damage to, or loss of, privately owned property, caused by **[**the Director or an Assistant Director, inspector, or special agent of the Federal Bureau of Investigation**]** *an investigative or law enforcement officer as defined in section 2680(h) of title 28 who is employed by the Department of Justice* acting within the scope of employment that may not be settled under chapter 171 of title 28. An officer or employee of the United States Government may not present a claim arising during the scope of employment. A claim may be allowed only if it is presented to the Attorney General within one year after it accrues.

(b) **[**The Attorney General shall certify to Congress a settlement under this section for payment out of an appropriation that may be

made to pay the settlement.] *The Attorney General shall make an annual report to Congress on any settlements made under this section.* The Attorney General shall include a brief statement on the type of claim, the amount claimed, and the amount of the settlement.

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